

From the:
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PATENT COOPERATION TREATY

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19 FEB 2004

F. B. RICE & CO.

WRITTEN OPINION
(PCT Rule 66)

To:

F B Rice & Co
605 Darling Street
BALMAIN NSW 2041

Date of mailing
(day/month/year) 18 FEB 2004

Applicant's or agent's file reference
501764/REO

REPLY DUE within TWO MONTHS
from the above date of mailing

International Application No.
PCT/AU2003/001151

International Filing Date (day/month/year)
4 September 2003

Priority Date (day/month/year)
4 September 2002

International Patent Classification (IPC) or both national classification and IPC
Int. Cl. ⁷ A61B 5/12, A61F 11/00

Applicant
COCHLEAR LIMITED et al

1. This written opinion is the **first** drawn by this International Preliminary Examining Authority.

2. This opinion contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

3. The **FINAL DATE** by which the international preliminary examination report must be established according to Rule 69.2 is:
4 January 2005

4. The applicant is hereby **invited to reply** to this opinion.

When? See the **Reply Due** date indicated above. However, the Australian Patent Office will not establish the Report before the earlier of (i) a response being filed, or (ii) one month before the **Final Date** by which the international preliminary examination report must be established. The Report will take into account any response (including amendments) filed before the Report is established. **If no response is filed by 1 month before the Final Date**, the international preliminary examination report will be established on the basis of this opinion.

Applicants wishing to have the benefit of a further opinion (if needed) before the report is established should ensure that a response is filed at least **3 months before the Final Date** by which the international preliminary examination report must be established.

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3.
For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4bis.
For an informal communication with the examiner, see Rule 66.6.

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Authorized Officer

JAMES WILLIAMS

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I. Basis of the opinion

1. With regard to the elements of the international application:*

- ☒ the international application as originally filed.
- ☐ the description, pages , as originally filed,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the claims, pages , as originally filed,
pages , as amended under Article 19,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the drawings, pages , as originally filed,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the sequence listing part of the description:
pages , as originally filed
pages , filed with the demand
pages , received on with the letter of

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/fig.

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

** Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims 1-19	YES
	Claims	NO
Inventive step (IS)	Claims	YES
	Claims 1-19	NO
Industrial applicability (IA)	Claims 1-19	YES
	Claims	NO

2. Citations and explanations

Novelty

None of the citations cited in the International Search Report, individually, discloses all of the essential features of the invention defined in Claims 1-19.

Inventive Step

D1. US 6,430,402

D2. WO 1994/14376

D3. US 5,278,994

D4. WO 1992/10134

D1 discloses a physician's testing system and method for testing an implantable cochlear stimulator. It does not disclose a saturation avoidance circuit.

D2 discloses a system for enabling telemetry from an audio (cochlear) prosthesis. It does not disclose a saturation avoidance circuit.

D3 discloses a power amplifier saturation prevention method and system.

D4 discloses an apparatus for measuring the transport time of nerve signals. It does not disclose a saturation avoidance circuit or specifically refer to a cochlear implant. However it does disclose a variable amplifier for adjusting the amplification levels for input to an A/D converter and hence avoiding saturation levels.

It would be obvious for a person skilled in the art to prevent saturation of a sensitive amplifier using such a system as disclosed in D3 or to adjust the amplification levels such as in D4 to avoid any disturbance to the accuracy of measurements.

D1 or D2 when read in light of D3 or D4 discloses all of the essential features of the invention defined in Claims 1-19.